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No. 84-780

In the Supreme Court of the United States

OCTOBER TERM, 1985

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS

v.

STEPHEN J. ROY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE APPELLANTS

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QUESTION PRESENTED

Whether 7 U.S.C. 2025(e) and 42 U.S.C. 602(a)(25), which require all applicants for and recipients of benefits under the Food Stamp and Aid to Families with Dependent Children programs to provide their state welfare agencies with their social security numbers, violate the Free Exercise Clause of the First Amendment as applied to persons who hold a sincere religious belief that social security numbers are part of a "great evil" that should be avoided.

PARTIES TO THE PROCEEDING

In addition to appellant Heckler, the defendants named in the district court were John R. Block, Secretary of Agriculture, and Walter Cohen, Secretary of the Pennsylvania Department of Public Welfare. Secretary Block is an appellant in this Court, and Secretary Cohen is an appellee appearing in support of the appellants.

In addition to appellee Roy, Karen Miller was a plaintiff in the district court and is an appellee in this Court.

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BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The opinion of the district court (J.S. App. 1a-23a) is reported at 590 F. Supp. 600. A prior opinion of the district court (J.S. App. 27a-35a) is unreported.

JURISDICTION

The judgment of the district court (J.S. App. 26a) was entered on June 22, 1984. The appellants filed a notice of appeal to this Court on July 18, 1984 (J.S. App. 37a). On September 11, 1984, Justice Brennan extended the time within which to docket this appeal to and including November 15, 1984. The jurisdictional statement was filed on November 13, 1984, and this Court noted probable jurisdiction on June 17, 1985 (J.A. 528). The jurisdiction of this Court is invoked under

28 U.S.C. 1252. See *United States* v. *Lee*, 455 U.S. 252, 256 n.5 (1982).

STATUTORY PROVISIONS INVOLVED

At the time of the district court's decision in this case, Section 402(a)(25) of the Social Security Act, 42 U.S.C. 602(a)(25), provided:

> A State plan for aid and services to needy families with children must * * * (25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan.[1]

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[1] The Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 *et seq.*, was signed into law on July 18, 1984. Section 2651(b)(1) of that legislation amended Section 402(a)(25) of the Social Security Act to read as follows (98 Stat. 1149):

> (25) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act[.]

Section 2651(a) of the Deficit Reduction Act of 1984 (98 Stat. 1147), in turn added a new section (Section 1137) to the Social Security Act that establishes detailed requirements for the income and verification systems that states must use in administering various federal welfare programs. Section 1137(a)(1) of the Social Security Act now provides (98 Stat. 1147) that:

> [T]he State shall require, as a condition of eligibility for benefits under any program listed in subsection (b), that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number[.]

The programs included in the expanded income and eligibility verification system established by the Deficit Reduction Act of 1984

Section 16(e) of the Food Stamp Act of 1977, 7 U.S.C. 2025(e), provides in pertinent part:

> The Secretary [of Agriculture] and State agencies shall (1) require, as a condition of eligibility for participation in the food stamp program, that each household member furnish to the State agency their social security account number (or numbers, if they have more than one number), and (2) use such account numbers in the administration of the food stamp program.

STATEMENT

Appellees Stephen J. Roy and Karen Miller refused to comply with the requirement, contained in 42 U.S.C. 602(a)(25) and 7 U.S.C. 2025(e), that participants in two federal-state programs, the Aid to Families with Dependent Children program and the Food Stamp program, furnish their state welfare agencies with the social security numbers (SSNs) of the members of their household as a condition of receiving program benefits. Appellees contended that compliance with the SSN requirement as applied to their three-year old daughter, Little Bird of the Snow, would violate their religious beliefs and constitute an impermissible burden on their First Amendment right to exercise their religion freely. Because appellees refused to comply with the statutory requirement that they provide an SSN for Little Bird of the Snow, the Pennsylvania Department of Public Welfare terminated AFDC and medical assistance benefits payable to appellees on Little Bird of the Snow's behalf and instituted proceedings to reduce the level of food stamps that appellees' household was receiving. Appellees then commenced this action against the Secretary of the

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are the Aid to Families with Dependent Children program, the Medicaid program, the unemployment compensation program of Section 3304 of the Internal Revenue Code of 1954 (26 U.S.C.), the Food Stamp program, and any state program under a plan approved under Titles I, X, XIV, or XVI of the Social Security Act. Pub. L. No. 98-369, § 2651(a), 98 Stat. 1148-1149.

Pennsylvania Department of Public Welfare, the Secretary of Health and Human Services, and the Secretary of Agriculture, challenging the constitutionality of the SSN requirement as applied to themselves. The district court held that the SSN requirement is unconstitutional as applied to appellee Roy and enjoined the state and federal defendants from denying program benefits to appellees on account of their failure to provide an SSN for Little Bird of the Snow. The court also enjoined Secretary Heckler from "using or disseminating" the SSN already assigned to Little Bird of the Snow in response to an application made by her mother, appellee Miller, shortly after Little Bird of the Snow's birth.

At trial, appellees introduced evidence concerning Roy's religious beliefs, and the government introduced evidence explaining the purpose of the SSN requirement in the administration of the AFDC and Food Stamp programs. That evidence may be summarized as follows.

A. Appellees' Challenge To The SSN Requirement

Appellee Roy is a Native American descended from the Abenaki Tribe.[3] Roy testified that he derives his religious beliefs "[p]artly from intuition, partly from hearing other Abenakis speak, partly from what [he] read about religious teachings" (J.A. 72; see also J.A. 76). The central tenet of Roy's beliefs appears to be the legend of Katahdin, which is about the "great evil." The "great evil" consists of three separate but related "evils." The first evil is the widespread use of computers, the second evil is society's casual acceptance of the widespread use of computers, and the third evil is the proliferation of weaponry that increasingly employs

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[3] Although appellee Miller is not an Indian by blood and did not testify at trial, she apparently shares Roy's Native American religious beliefs (J.A. 18). Because of Miller's failure to offer any proof regarding her religious beliefs, the government moved to have her dismissed as a plaintiff, but the district court denied the motion (J.A. 190-198).

computer technology, thereby making the use of the weapons to kill people a "sterile" act. J.S. App. 4a. The legend of Katahdin is "ancient," predating the arrival of the white man. It does not deal specifically with nuclear energy or computers, but Roy's "intuition" tells him that the legend would be concerned about computers and nuclear weapons. J.A. 126-127.

Roy considers social security numbers to be part of the "great evil," apparently because they are "used by the computers" and therefore rob people's spirits in a manner similar to what psychologists might call "dehumanization" (J.A. 87). In addition, Roy believes that the evil of SSNs is related to their function as unique personal identifiers. He testified that an SSN would be used to rob Little Bird of the Snow "of her ability to have greater power in that this number is a unique number. • • • It's applied to her and only her; and being applied to her, that's what offends us, and we try to keep her person unique, and we try to keep her spirit unique, and we're scared that if we were to use this number, she would lose control of that and she would have no ability to protect herself from any evil that that number might be used against her" (J.A. 85; see also J.A. 108-109).

Although the case was tried on the assumption that Little Bird of the Snow did not have an SSN and that it would violate Roy's religious beliefs to obtain one for her, it was learned on the last day of trial that she does have one.[5] Her mother, appellee Miller, applied for Little Bird of the Snow's SSN when the child was born, apparently without Roy's knowledge. When Roy received Little Bird of the Snow's social security card in the mail, he and Miller allegedly returned it to the Social Security Administration and asked that it be "revoked."

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[5] Roy was asked whether he ever told his attorney that Little Bird of the Snow already had an SSN. Roy stated that he had but seemed to be unsure whether the attorney was paying attention during their consultation. J.A. 472.

Roy testified that the Social Security Administration advised him in writing that Little Bird of the Snow's SSN would remain "dormant," but Roy did not produce any correspondence to support his testimony. J.A. 464-467, 471.

Roy himself uses a social security number, as does Miller and their older daughter, Renee. Roy does not object to providing SSN's for himself, Miller, and Renee because all three acquired their numbers before Roy came to hold his current religious beliefs and therefore the spirits of all three have been sufficiently robbed that they can no longer be prepared for greater power. J.A. 88, 110. With respect to Little Bird of the Snow, on the other hand, Roy believes that he can still prepare her for greater power and that her spirit has not yet been robbed by overuse of the SSN she acquired shortly after her birth. Roy believes that Little Bird of the Snow must decide for herself whether she wishes to use an SSN, but he does not know when she will be ready to make that decision or when he will discuss the matter with her. J.A. 90, 114-115, 120, 123-124.

Roy testified that he objects not to all numbers (but see page 7, *infra*) but just to "the manner [in which the SSN] is used because it represents a great evil to us" (J.A. 86). Roy has no specific religious objection to receiving numbered food stamps or numbered AFDC checks (J.A. 94). On the other hand, Roy testified that he would be upset "[t]o some degree" by the use of *any* sort of information that identified himself and his family as individuals (J.A. 112). He also testified that he might be "a little" upset if he were to learn that the state welfare department uses a unique case number to identify Little Bird of the Snow (J.A. 116).

During the course of trial, Roy was asked about various alternatives to the use of an SSN for Little Bird of the Snow. The district judge explained his system of converting numbers into words as a device to remember telephone numbers; for example, the district judge

remembers the telephone number of the Chief Judge of the District by calling him "Phillippino Overpot." J.A. 129. Using this system, the judge asked Roy whether he would object to Little Bird of the Snow's being given the number 515-94-1802 as her SSN, which represented the judge's conversion of Little Bird of the Snow's name into a nine-digit number.[4] Although he saw "a lot of good" in the suggestion, Roy rejected this alternative because the special number still would apply uniquely to Little Bird of the Snow. In addition, Roy felt that Little Bird of the Snow would have to have some say in the decision to accept or reject the judge's suggestion, but she is currently incapable of making such a decision. J.A. 468-469.

Roy also was unwilling to select any other SSN from a group of numbers that the government could make available, and he testified that he would object to any other system of unique numerical identifiers (J.A. 115-116). The only alternatives acceptable to Roy were the use of his own SSN for Little Bird of the Snow or the use of her name alone (J.A. 45-46, 93). Roy did not believe that the use of his SSN for Little Bird of the Snow would harm her because the number would not be unique to her (J.A. 93), and he did not object to the use of her name alone because he believes that her name would protect her from any evil that might other-

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[4] A government witness testified that the number 515-94-1802 has not been assigned to anyone else and that the Social Security Administration occasionally assigns special numbers upon request. The witness did note that the number created by the judge, because of its first three digits, would normally be assigned to someone in Kansas rather than Pennsylvania, and that even in Kansas the number was approximately 30,000 numbers ahead of numbers then being issued. Because computers are programmed to reject "impossible" account numbers, some sort of computer modification would have to be made so that the number 515-94-1802 would not be rejected. J.A. 402-403. There is nothing in the record to suggest that the government would not have made the necessary modification had the judge's proposal been acceptable to Roy.

wise befall her while her records were being processed through a computer system (J.A. 94).

B. The Role Of SSNs In The Administration Of The AFDC And Food Stamp Programs

The AFDC program, established by Title IV of the Social Security Act, 42 U.S.C. 601 *et seq.*, is a jointly-funded federal-state program. Its purpose is to encourage "the care of dependent children in their own homes or in the homes of relatives" by providing funds for the support of such children. 42 U.S.C. 601. Eligibility for the program is based on financial need. Dependent children and their parents or other caretaker relatives are eligible for a grant if their income and resources are less than a set minimum subsistence level. 42 U.S.C. 602(a)(7) and (18).

The purpose of the Food Stamp program, as established in the Food Stamp Act of 1977, 7 U.S.C. 2011 *et seq.*, is to "permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." 7 U.S.C. 2011. The Food Stamp program is jointly administered by the state and federal governments. As is the case under the AFDC program, eligibility for the Food Stamp program is based on financial need. 7 U.S.C. 2014.

In order to receive benefits under either program, therefore, a household must establish its financial eligibility; continued eligibility for the AFDC program is redetermined at least once every six months (45 C.F.R. 206.10(a)(9)(iii)), and households participating in the Food Stamp program must be recertified at intervals ranging from one month to a maximum of 12 months (7 C.F.R. 273.10(f)).[9] To make possible the verification

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[9] Periodic redeterminations of eligibility are required because benefits, based as they are on financial need, must be adjusted, up or down, to take account of recipients' constantly changing eco-

and periodic reverification of income, resources, and other eligibility factors, and to aid in the detection of fraud, Congress has required benefit applicants and recipients to furnish the administering state agencies with the SSNs of each member of their household. 7 U.S.C. 2025(e); 42 U.S.C. 602(a)(25); see S. Rep. 93-1356, 93d Cong., 2d Sess. 49 (1974); H.R. Rep. 97-106, 97th Cong., 1st Sess. 58, 60 (1981). Congress has not chosen to require benefit applicants and recipients to furnish any other self-identifying information to their state welfare agencies; although state agencies commonly request additional information, the SSN requirement is the only information mandated by federal statute.[6]

As the record in this case reflects, the AFDC and Food Stamp programs are truly massive. In fiscal year 1981, an average of nearly four million families received AFDC payments each month. J.A. 26. These families included more than 11 million persons, of whom 7½ million were children. *Ibid.* In that same year, the federal government spent nearly $8 billion to fund AFDC programs in the states and other United States jurisdictions. *Ibid.* Similarly, in fiscal year 1982, an average of approximately 20 million persons received food stamps each month, at a cost to the federal government of approximately $11 billion. J.A. 34.[7]

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nomic circumstances. In addition, changes in family structure, such as separation or divorce, or removal of a child from the family, also affect welfare eligibility.

[6] Congress has authorized the use of photographic identification cards in the administration of the Food Stamp program. 7 U.S.C. 2020(e)(16). Congress has not made the use of such cards mandatory, however, choosing instead to leave the matter to the discretion of the Secretary of Agriculture. *Ibid.*

[7] It is also significant that a household determined to be eligible for the Food Stamp program is automatically entitled to participate in six other benefit programs administered by the Department of Agriculture without further demonstration of eligibility. See J.A. 35; 42 U.S.C. 1758(d)(2)(B). The federal government expended

Requiring all applicants and recipients to provide SSNs serves a multitude of discrete purposes. First, the magnitude of programs such as AFDC and Food Stamps requires computerized systems for the management of data concerning benefit applicants and recipients. The SSN requirement has become particularly important as states move toward centralized administration of numerous welfare programs. As the record reflects, effective centralization and computerization of state welfare systems requires the assignment of a unique numerical identifier to all applicants and recipients; in programs of this size, moreover, all persons must have the same type of number. J.A. 30.

Second, the SSN requirement enables state welfare agencies to verify applicants' resources and income quickly and reliably, and thus to ensure that a family's grant is set at the correct level. J.A. 26-27, 35-36. In this connection, the statutory SSN requirement is necessary in order to ascertain whether AFDC applicants are receiving other federal benefits that would render them ineligible for AFDC benefits or require a reduction in the level of AFDC benefits provided. J.A. 199-200, 215-216. Obtaining applicants' SSNs is particularly necessary for the verification of income and resources because the records systems of other governmental entities and private entities that state welfare agencies consult for verification purposes utilize SSNs for identification. For example, many private and public institutions, including banks, businesses, hospitals, schools, and state and local service agencies, maintain their records based upon SSN identification. J.A. 203-204, 212-213, 342-345, 360.

$3.8 billion in benefits under these programs in fiscal year 1982 (J.A. 35). Thus, a household certified as eligible for food stamps, even on the basis of erroneous or incomplete information, may also obtain improper access to those additional benefit programs. Similarly, states are required to make Medicaid coverage available to all AFDC recipients, based solely on the determination that they are eligible for AFDC benefits. See 42 U.S.C. 1396a(a)(10)(A).

Finally, the SSN requirement is an essential tool in the government's efforts to combat welfare fraud and waste. The Department of Agriculture estimates that, in fiscal year 1981, $1 billion in food stamp benefits was attributable to persons ineligible for the program or to overpayments to eligible individuals. See *Oversight of the Food Stamp Program: Hearings Before the Senate Comm. on Agriculture, Nutrition & Forestry*, 98th Cong., 2d Sess. 255 (1984). The SSN requirement addresses this problem at least in part by enabling the government to verify income and resources, to guard against duplicate payments, and to keep track of persons no longer entitled to receive food stamps because of past abuses of the program. J.A. 343-344.

To deal with the problems of fraud and waste, the federal and state governments have increasingly relied on computer "matching" techniques employing SSNs. For example, upon learning of reports that many federal and military employees were receiving AFDC benefits, the Inspector General of the Department of Health and Human Services launched "Project Match" in 1977 to cross-check federal military and civilian employee rolls against state AFDC rolls. Initially, 26 states submitted computer tapes for this match, and 33,000 apparent matches were forwarded to the federal agencies for submission of payroll data. Approximately 33% of these cases were found to be overpaid or ineligible for benefits. Interjurisdictional matches were also undertaken in 1977 to compare records from participating states in search of instances in which individuals might be drawing grants from two or more jurisdictions. Out of the initial 26 states that were "matched" in 1977, 9,000 individuals were identified as receiving duplicate welfare payments. A second interjurisdictional match of all 50 states identified an additional 8,000 such individuals. The Inspector General of HHS estimated savings of $7.9 million in reduced and terminated AFDC payments in the first year following the federal employee and inter-

jurisdictional matches. J.A. 27-28. Interjurisdictional matches have continued in subsequent years, and each year's match uncovers more fraud and abuse. J.A. 28. Interjurisdictional matches cannot be performed without SSNs because SSNs are the only common element in the data systems of the various states. J.A. 208-211, 222-223, 230-231.[8]

SSNs are required for all members of a household, including children, because the various data banks that are consulted to verify eligibility and detect fraud may contain information about each member of a household. For example, children may have bank accounts in their own names, and their unearned interest income must be considered in determining a household's total income and resources. If the SSNs of only the parents were required, such information would go undetected. In addition, it is not uncommon for children to be improperly claimed as dependents by more than one household. Without an SSN requirement applicable to children, therefore, state welfare agencies would be unable to detect improper payments or cases in which benefits are sought on behalf of nonexistent children. J.A. 223-225, 347-348.[9]

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[8] Although certain types of intrastate matches may be performed without SSNs, even the reliability of those matches is significantly less than matches performed with SSNs. Duplication of names, misspellings, variations in the manner in which non-numerical data is entered into computers, and various other factors all combine to reduce the effectiveness of any system of cross-checking that does not employ SSNs. J.A. 219-222, 227-228, 346.

[9] State governments have a particularly strong incentive to employ SSNs in the administration of these programs because they are under a congressional mandate to reduce their payment error rates. 7 U.S.C. 2025(d)(2); 42 U.S.C. 603(i). Moreover, the federal government reduces the level of reimbursement to the states when their payment error rates exceed a certain level. 7 U.S.C. 2025(a)-(d); 42 U.S.C. 603(i). On the other hand, the federal government provides states with an incentive to improve the reliability of their programs by agreeing to pay a higher portion of the administrative costs incurred by a state in setting up a system

C. The Importance Of SSNs In The Administration Of Government Programs Generally

Although this case involves the SSN requirement only as it applies to the AFDC and Food Stamp programs, it is important to appreciate the central role that SSNs play in the administration of a wide variety of government programs. At the outset, we recognize that it is precisely the widespread use of SSNs that is disturbing to appellees; at the same time, however, the Court cannot ignore the fact that, as our society becomes increasingly complex, and as citizens (such as appellees) increasingly call upon the government to provide benefits and services, the government cannot function in the simplified manner that appellees have chosen for their own personal lifestyle. Cf. *Heckler* v. *Campbell*, 461 U.S. 458, 461 n.2 (1983); *Schweiker* v. *McClure*, 456 U.S. 188, 198 n.13 (1982).

Government-wide use of the SSN began in 1943, when President Roosevelt issued Executive Order No. 9397, 3 C.F.R. 57 (Supp. 1943). In pertinent part, that Order provided:

> WHEREAS certain Federal agencies from time to time require in the administration of their activities a system of numerical identification of accounts of individual persons; and
>
> WHEREAS some seventy million persons have heretofore been assigned account numbers pursuant to the Social Security Act; and
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> • • • • •
>
> WHEREAS it is desirable in the interest of economy and orderly administration that the Federal Government move towards the use of a single, un-

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that meets various federal standards, including such elements as cross-matching the income reports of welfare applicants and recipients against records of the Social Security Administration, state income tax records, vital statistics bureaus, and motor vehicle registrations. 7 U.S.C. 2025(g); 42 U.S.C. 602(a)(30) and 603(a)(3)(B). See also J.A. 197-199, 353-356.

duplicated numerical identification system of accounts and avoid the unnecessary establishment of additional systems;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

1. Hereafter any Federal department, establishment, or agency shall, whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize exclusively the Social Security Act account numbers assigned pursuant to Title 26, section 402.502 of the 1940 Supplement to the Code of Federal Regulations and pursuant to paragraph 2 of this order.

2. The Social Security Board shall provide for the assignment of an account number to each person who is required by any Federal agency to have such a number but who has not previously been assigned such number by the Board. The Board may accomplish this purpose by (a) assigning such numbers to individual persons, (b) assigning blocks of numbers to Federal agencies for reassignment to individual persons, or (c) making such other arrangements for the assignment of numbers as it may deem appropriate.

Over the past 40 years, Congress and numerous federal agencies have recognized the necessity of SSNs for the administration of a myriad of programs in which accurate identification of individuals is important. See, *e.g.*, 18 U.S.C. 842(f) (the Secretary of the Treasury must be provided with the social security number of any person to whom explosive materials are distributed); 22 U.S.C. (Supp. I) 2671(d)(1) (the Secretary of State shall require borrowers under the repatriation loan program to provide their social security number); 26 U.S.C. 6109(d) ("The social security account number issued to an individual * * * shall * * * be used as the identifying number for such individual for purposes of [the Internal Revenue Code]."); 26 U.S.C. 6109(a)(1) (SSNs

must be used as the identification number by any person required to file a tax return or other document under the Internal Revenue Code). Particularly sweeping are the provisions of the Social Security Act itself; of special relevance to this case is 42 U.S.C. 405(c)(2)(B)(i), which provides in pertinent part as follows:

> [T]he Secretary [of Health and Human Services] shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers • • •:
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> (II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person • • •.

Equally significant is 42 U.S.C. 405(c)(2)(C)(i), which expresses a congressional policy that carries forward and expands upon the policy initially adopted by President Roosevelt:

> It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary [of Health and Human Services] for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) • • • the social security account number • • • issued to him by the Secretary.

Most recently, Congress has expanded the role of SSNs in the administration of welfare programs by requiring state agencies administering the Unemployment

Compensation program, the Food Stamp program, the AFDC program, the adult assistance programs (Titles I, X, XIV and XVI of the Social Security Act), and the Medicaid program to develop comprehensive income and eligibility verification systems for those programs. Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2651(a), 98 Stat. 1147. The first requirement imposed by Section 2651(a) is that benefit applicants and recipients must provide administering state agencies with their SSNs as a condition of program eligibility; the state agencies, in turn, are required to "utilize [SSNs] in the administration of [the covered programs] so as to enable the association of the records pertaining to the applicant or recipient with his account number." *Ibid.* The legislative history of this provision clearly demonstrates Congress's understanding of the centrality of standardized data, such as SSNs, to effective program administration (H.R. Conf. Rep. 98-861, 98th Cong., 2d Sess. 1411 (1984)):

> The income and eligibility system requires use of standardized data formats to facilitate exchange of information, for the purpose of identifying and reducing ineligibility and incorrect payments. The requirement for standardized formats is intended to assure easy exchange of information by progress within States, and to facilitate the exchange of information among States. This requirement does not require the use by States of identical systems, but only that each State must be able to provide certain essential eligibility data in a format which can be used by the agencies and jurisdictions with which data exchanges are made.[10]

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[10] See also 50 Fed. Reg. 10450 *et seq.* (1985) (proposed rules implementing Section 2651 of the Deficit Reduction Act of 1984 (98 Stat. 1147-1152)). As the preamble to the proposed rules states (50 Fed. Reg. 10451 (1985)):

> The purpose of using available information to verify program participant eligibility is to improve the accuracy of program

As previously noted (see page 12, *supra*), SSNs are the only common data element shared by the various states. Moreover, the Social Security Administration currently maintains data on more than 383,000,000 accounts (J.A. 23). In dealing with numbers of this magnitude, the duplication of names makes a numerical system of identification essential to effective operation of countless government programs, including those at issue in this case. J.A. 32, 34.

D. The District Court's Decision

The district court issued an opinion (J.S. App. 1a-23a) holding that the SSN requirement is unconstitutional as applied to appellee Roy. The court first held that the case was not moot despite the surprise discovery on the last day of trial that Little Bird of the Snow has had an SSN since birth (see page 5, *supra*). The court reasoned (*id.* at 11a) that, while Roy would have preferred that no SSN had ever been established for Little Bird of the Snow, "Roy sincerely believes that the spirit of Little Bird of the Snow has not been robbed by the mere establishment of a social security number for her," and that Roy "further believes that no substantial harm will befall Little Bird of the Snow until her social security number is 'used'." Accordingly, the court concluded that appellees' desire to obtain welfare benefits without the government's using Little Bird of the Snow's SSN saved the case from mootness. *Id.* at 11a-12a.

The district court next concluded that Roy's beliefs concerning SSNs are religious in nature (J.S. App. 13a-

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eligibility and benefit determination. In so doing the agencies will be able to improve program integrity by directing limited resources to those individuals who are legally eligible for program benefits. This improved program integrity will result in a general public and participant perception that the welfare programs are fair and equitable. Finally, when fully operational the income and eligibility verification procedures will aid in the reduction of the budget deficit.

14a) and that they are sincerely held (*id.* at 14a-15a).[11] At the same time, the court found that the government's interest in maintaining the SSN requirement is "substantial" and "great" (*id.* at 15a, 18a). (The court previously had issued an opinion on the parties' motions for summary judgment in which it found that the governmental interest is "compelling" (*id.* at 32a). The court did not alter that conclusion in its final opinion.) The court then stated that it would "consider this case under the reasonable less restrictive alternative standard" (*id.* at 18a); in other words, it would uphold the SSN requirement unless it were shown that the governmental interest could be served "by some reasonable less restrictive alternative" (*id.* at 32a).

Although the district court stated (J.S. App. 18a) that it would consider appellees' "interests as against the government's interest in this particular case as well as the government's interest in the social security number requirement as a general matter," in fact the court's analysis focused entirely on this particular case. Thus, in its case-specific analysis, the court held that the government's interest "in avoiding a grant of an exemption to the social security number requirement to the Plaintiffs in

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[11] With respect to appellee Miller, the court stated (J.S. App. 14a-15a):

> [B]ecause she did not testify at the trial of this case, we are unable to determine whether she sincerely holds religious beliefs identical or similar to those held by Mr. Roy. Plaintiff Miller does not claim that she has been denied cash assistance for Little Bird of the Snow but she contests Defendants Block and Cohen's threatened termination of food stamps for Little Bird of the Snow. We are hesitant to grant Miller injunctive relief against the threatened termination of food stamps in light of her failure to testify at trial. Nevertheless, it would be inequitable to hold that Plaintiff Roy need not provide a social security number for Little Bird of the Snow while allowing the government to require Miller to provide a social security number for Little Bird of the Snow, thereby effectively denying Roy the relief he seeks.

this case is very small." *Id.* at 19a. The court summed up its conclusion as follows (*ibid.*):

> It appears to the Court that the harm that the Government might suffer if the Plaintiffs prevailed in this case would be, at worst, that one or perhaps a few individuals could fraudulently obtain welfare benefits. Such a result would obtain only if (1) Little Bird of the Snow attempted fraudulently to obtain welfare benefits or someone else attempted fraudulently to obtain such benefits using Little Bird of the Snow's name *and* (2) identification procedures available to the Defendants that do not require utilization of a social security number failed to expose the fraud. This possibility appears to the Court to be remote.

Despite its previously-stated intention to examine the case from two perspectives, the district court's programmatic analysis was not any different than its case-specific analysis. The court merely wrote that the government's *general* interest in maintaining the SSN requirement "does not appear to be threatened by the claim presented in this case *because the Plaintiffs' claim appears to be extremely unusual.*" *Id.* at 18a (emphasis added). At no point did the court consider the institutional harm caused by the need to recognize individual exceptions to the SSN requirement. Indeed, the court displayed an extremely cavalier attitude toward the very governmental interests that it had previously found compelling. Instead of determining whether those interests could be served equally well if Little Bird of the Snow were exempted from the SSN requirement, the court held, in essence, that a little inefficiency and even a little fraud were of no consequence because, when compared to the magnitude of the programs as a whole, the damage to the government's compelling interests would be small. See J.S. App. 19a-21a.

In view of these conclusions, the district court enjoined defendants from denying benefits to appellees for

Little Bird of the Snow because of appellees' failure to provide an SSN for Little Bird of the Snow (J.S. App. 21a). The court also enjoined Secretary Heckler from "using or disseminating" the SSN already assigned to Little Bird of the Snow (*id.* at 22a) and ordered the Secretary to "notify any agency, individual, business entity or other third party to which the number has been provided and demand that said agency permanently refrain from: (1) making any use of the number and (2) disseminating the number to any other agency, person, individual, business entity, or any other third party" (*id.* at 24a-25a). These injunctions are to remain in effect until Little Bird of the Snow's 16th birthday (*id.* at 22a). Finding that appellees have no current religious objection to the past establishment of an SSN for Little Bird of the Snow, the court denied their request that her SSN be "eliminated" (*id.* at 21a-22a).

SUMMARY OF ARGUMENT

I. The district court has invalidated as applied to appellees the requirement that applicants for and recipients of AFDC and food stamps to provide to their state welfare agencies a social security number for every household member who receives benefits. The invalidation of these provisions seriously jeopardizes the government's ability to combat fraud in federal welfare programs and generally to promote the administrative efficiency of such programs through the uniform application of a neutral rule of unquestionable rationality. We submit that the district court's ruling was based on a flawed premise—that the smaller the number of persons objecting to a neutral requirement on religious grounds, the greater their claim to an exemption from the requirement. The logical corollary to that premise is that government may refuse to accommodate religious beliefs so widely held that the administrative burden and programmatic impact of judicially-mandated exemptions would be too great. Such a result defies common sense.

A. This Court has ruled that when an individual's sincerely held religious beliefs conflict with the means chosen to accomplish a compelling governmental interest, and no less restrictive alternatives are available to achieve that interest, the government's programmatic concerns must prevail. *Bob Jones University* v. *United States*, 461 U.S. 574 (1983). In the present case, the district court concluded that Roy's religious beliefs are sincerely held, but it also found that the government has a compelling interest in using SSNs in its welfare programs. The disagreement between the parties thus turns on the proper application of the "least restrictive means" test.

In our view, the "least restrictive means" inquiry in Free Exercise cases should focus on the programmatic interests furthered by the statutory requirements at issue—in this case, verifying eligibility, preventing and detecting fraud, and promoting efficient administration of massive government programs. If the government can accomplish those objectives equally well by adopting a less burdensome alternative applicable to the populace as a whole, then it may be appropriate to require the government to offer that alternative to appellees. But if SSNs are essential to the accomplishment of Congress's general goals in the administration of federal welfare programs, then the government should not be obliged to rely on a less effective alternative simply because the granting of a handful of exemptions might be thought to work only a marginal interference with the legislative purposes. And certainly there is no support for the notion, implicit in the district court's analysis, that the government's compelling interests in this case must be subordinated to appellees' religious objection to the SSN requirement simply because a small amount of inefficiency and fraud would not bring about the collapse of the AFDC and Food Stamp programs.

This Court's decision in *United States* v. *Lee*, 455 U.S. 252 (1982), demonstrates the error of the district

court's analysis. There, the Court rejected the claim of an Amish employer for an exemption from paying social security taxes for his Amish employees. The Court did so despite the fact that an exemption limited to Amish employers would have done little if any damage to the integrity of the social security system, because the Amish not only oppose paying into the system but also oppose receiving benefits. Instead, the Court focused on the compelling governmental interest in *uniform* administration of the social security program and concluded that mandatory participation by *all* employers was essential to the achievement of Congress's purposes. So too, the earlier cases of *Braunfeld* v. *Brown*, 366 U.S. 599 (1961), and *Prince* v. *Massachusetts*, 321 U.S. 158 (1944), demonstrate the impropriety of ignoring a legislative determination that individualized exemptions would undermine the purposes behind a neutral law of general applicability. In both cases, the Court declined to grant individualized exemptions from the statutes at issue, even though there was no indication that a few such exemptions would have worked any serious interference with the overall legislative purposes.

B. The approach we advocate here parallels the Court's approach in numerous cases construing the First Amendment's protection of speech. Declining to focus on the number of persons who might assert a claim for special treatment, the Court instead has repeatedly looked to the consequences of wholesale exemptions in determining whether a particular plaintiff's claim to an exemption overrides the challenged government regulation. See, *e.g.*, *Regan* v. *Time, Inc.*, No. 82-729 (July 3, 1984), slip op. 16 n.12; *Clark* v. *Community for Creative Non-Violence*, No. 82-1998 (June 29, 1984), slip op. 8; *Heffron* v. *Int'l Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 652 (1981). These cases are especially significant because, at the same time that the Court has focused on the programmatic effects of wholesale exemptions, it has not required the government to

show a substantial likelihood that large numbers of persons could be expected to claim similar exemptions. Here too, it is sufficient that the government would have no principled basis upon which to grant certain religiously-grounded claims for exemptions while denying others; it need not show that there are potentially vast numbers of such claims.

C. This case is distinguishable from *Thomas* v. *Review Board*, 450 U.S. 707 (1981), and *Sherbert* v. *Verner*, 374 U.S. 398 (1963), in which the Court held that states could not refuse to provide unemployment benefits to persons who had terminated their employment on religious grounds. The statutes at issue in those cases expressly required case-by-case substantive determinations of each individual's entitlement to unemployment compensation, whereas the federal statutes at issue here impose a purely mechanical requirement applicable to all who seek AFDC and Food Stamp benefits. Moreover, requiring states to pay unemployment benefits to workers who had terminated their employment on religious grounds did not interfere with the legislative purpose of ensuring that benefits were paid only to persons who had left their jobs for legitimate reasons. In this case, by contrast, Congress's overall goals of verifying program eligibility, preventing and detecting fraud, and administering massive government programs efficiently would be seriously jeopardized if the government must exempt certain people from the SSN requirement.

Thomas and *Sherbert* also raised issues of a fundamentally different nature than the instant case. In *Thomas* and *Sherbert*, the state statutes imposed a substantive condition on the right to unemployment benefits that operated so as to discriminate against the exercise of religious beliefs; religious objections to employment were treated differently from all other disabilities. Here, by contrast, no substantive requirement, religious or otherwise, operates to deny appellees AFDC and Food

Stamp benefits. Rather, what is at issue is merely an informational requirement used to establish a claimant's eligibility for benefits; the requirement has nothing to do with religion, and it is applied to all who seek benefits, without regard to religious considerations.

Finally, this case is distinguishable from *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), in which the Court held that Amish parents could not be compelled to comply with Wisconsin's compulsory school attendance law after their children had completed the eighth grade. Unlike the typical Free Exercise case, involving a clash between minority rights and societal interests, both the Amish parents in *Yoder* and the State shared a common interest in providing for the welfare of Amish children. It is therefore not surprising that the Court rejected the State's attempt, in its parens patriae capacity, to displace the fundamental role of parents in the religious and educational upbringing of their children, particularly in light of the unusually strong showing made by the Amish parents that their alternative mode of continuing education fully prepared their children for adult life (see 406 U.S. at 232). Furthermore, the substantive requirement at issue—forced attendance at school for one or two more years than the religious beliefs of the Amish permitted—was, under any mode of analysis, a significantly greater infringement on religious liberty than the purely informational requirement at issue in this case.

II. Even if the Court were to analyze this case on an individual, rather than a programmatic, basis, it is clear that the compelling governmental interests served by the SSN requirement cannot be satisfied if Little Bird of the Snow is exempted from that requirement. Congress intended to ensure that AFDC and Food Stamp benefits are provided only to the eligible needy, and it determined that the SSN requirement is essential to accomplish that purpose. Appellees' refusal to supply Little Bird of the

Snow's SSN clearly and directly frustrates the government's compelling interests. In practical effect, appellees insist on partaking of government benefits, but only on their own terms.

Moreover, appellees' suggested "less restrictive alternatives" to providing Little Bird of the Snow's SSN do not satisfy Congress's purposes. The use of appellee Roy's SSN to identify Little Bird of the Snow is inherently incompatible with the role of SSNs as unique *personal* identifiers. And the use of Little Bird of the Snow's name alone is simply not as reliable a method for computer cross-matching as the use of her SSN; indeed, in many instances the absence of an SSN makes cross-checking impossible. In any event, the constitutionality of the sole informational requirement that Congress has chosen to impose on welfare applicants and recipients cannot be made to depend on the uniqueness of a particular litigant's name.

The inadequacy of appellees' suggested alternatives provides yet another basis for distinguishing this case from *Wisconsin* v. *Yoder*, *supra*. In *Yoder*, the Court specifically noted that excusing Amish children from Wisconsin's compulsory education laws beyond the eighth grade in no way interfered with the State's admittedly strong interest in universal compulsory education (406 U.S. at 235-236). This was so because the Amish parents had carried the extremely "difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education" (*id.* at 235). Appellees' proffered alternatives, on the other hand, bear no relationship to the overall interests that the government seeks to promote through the SSN requirement.

Finally, it is significant that Roy's religious beliefs cannot be fully accommodated by *any* alternative that the government might adopt. Although the focus of this litigation has been on the SSN requirement, the record also reflects that Roy objects, on religious grounds, to the use

of *any* information that would identify himself and his family as individuals, and he objects to any system of numerical identification. Yet even if Little Bird of the Snow were to be exempted from the SSN requirement, she still would be subject to some separate system of numerical identification, if only for the purpose of ensuring that she receives the benefits she seeks. Administering programs the size of the AFDC and Food Stamp programs unavoidably requires the use of computers, and the management of computerized data on such a large scale requires the assignment of unique numerical identifiers. The government should not be required to devise a separate system for appellees when that system, whatever it might be, necessarily would entail virtually the same "evils" that prompted this litigation in the first place.

III. The district court's injunction is in any event overbroad. The court cited no tenable basis for enjoining Secretary Heckler from "using or disseminating" Little Bird of the Snow's SSN and directing the Secretary to demand that all other entities, governmental and private, cease using Little Bird of the Snow's SSN. Even under the most expansive interpretation, the Free Exercise Clause only prohibits government from compelling an individual to think or act contrary to his religious beliefs. No decision of this Court holds that the Clause protects an individual against having his religious sensibilities offended by witnessing actions of government to which he objects.

ARGUMENT

THE SSN REQUIREMENT SERVES A COMPELLING GOVERNMENTAL INTEREST THAT CANNOT BE ACHIEVED THROUGH ANY LESS BURDENSOME MEANS

The district court has held unconstitutional as applied to appellee Roy the requirement that applicants for and recipients of AFDC and food stamps provide to their state welfare agencies a social security number for every household member who receives benefits. As the only requirement Congress has expressly imposed on the way in which recipients of these benefits are identified, the statutory provisions at issue come to this Court with a heavy presumption of constitutionality. The district court's invalidation of these provisions seriously jeopardizes the government's ability to combat fraud in federal welfare programs and generally to promote the administrative efficiency of such programs through the uniform application of a logical, neutral rule.

These adverse effects need not be suffered, because the district court's ruling is based on a flawed premise—that the smaller the number of persons objecting to a neutral requirement on religious grounds, the greater their claim to an exemption from the requirement. No decision of this Court supports such a peculiar result. Instead, it is clear that, in the circumstances here presented, the individual's interest in religious liberty must yield to the greater interest of society in the efficient and effective administration of its welfare programs.

A. The Availability Of Alternatives To The SSN Requirement Should Be Evaluated On The Basis Of The Programmatic Governmental Interests Furthered By That Requirement Rather Than The Cost Of Granting Exemptions To One Or A Handful of Individuals

1. This Court has repeatedly emphasized that although "the Free Exercise Clause provides substantial protection for lawful conduct grounded in religious belief, • • •

'[n]ot all burdens on religion are unconstitutional. . . . The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.'" *Bob Jones University* v. *United States*, 461 U.S. 574, 603 (1983) (quoting *United States* v. *Lee*, 455 U.S. 252, 257-258 (1982)).

In both *Bob Jones University* and *Lee*, the Court addressed the question presented here, namely, how to resolve the conflict between a requirement that serves a compelling governmental interest and the contrary dictates of a sincerely held religious belief. When such a conflict occurs, "[t]he remaining inquiry is whether accommodating the • • • belief will unduly interfere with fulfillment of the governmental interest." *United States* v. *Lee*, 455 U.S. at 259. If the belief "cannot be accommodated with that compelling governmental interest, • • • and no 'less restrictive means' • • • are available to achieve the governmental interest," the government's interest must prevail. *Bob Jones University*, 461 U.S. at 604 (citations and footnote omitted). As the Court concluded in *Lee*, 455 U.S. at 259 (footnote omitted):

> To maintain an organized society that guarantees religious freedom to a great variety of faiths requires that some religious practices yield to the common good. Religious beliefs can be accommodated, see *e.g.*, *Thomas* [v. *Review Board*, 450 U.S. 707 (1981)]; *Sherbert* [v. *Verner*, 374 U.S. 398 (1963)], but there is a point at which accommodation would "radically restrict the operating latitude of the legislature." *Braunfeld* [v. *Brown*, 366 U.S. 599, 606 (1961)].

As we demonstrate below, that point has been exceeded by the district court's decision in this case.

2. We do not contend that Roy's beliefs are not religious in nature, nor do we contend that his beliefs are not sincerely held. But the district court also found that the government has a compelling interest, as a general

matter, in requiring SSNs in the administration of the AFDC and Food Stamp programs (J.S. App. 15a, 18a, 32a). The dispute in this case thus turns on the "least restrictive means" aspect of the inquiry—that is, whether the test is to be applied to the programmatic governmental interests furthered by the SSN requirement, or whether the Free Exercise Clause requires a case-by-case determination of each individual claim to an exemption. In our view, the district court erred in considering appellees' claim in isolation and in placing its primary focus on the number of persons who potentially might seek an exemption from the SSN requirement.[12] Instead, it should have focused on the programmatic interests advanced by the statutory requirements at issue—verifying eligibility, preventing and detecting fraud, and promoting efficient administration of massive government programs—and deferred to Congress's judgment that there should be no exceptions to the statutory requirements.

In other words, if the government can accomplish its objectives equally well by adopting a less burdensome alternative applicable to the populace as a whole, then it may be appropriate to require the government to adopt that alternative in the case of a particular plaintiff. But if the alternative chosen is the *most* effective means of accomplishing the compelling objective—as SSNs unquestionably are in achieving Congress's goals in the administration of federal welfare programs—then the government should not be required to devise less effective alternatives simply because the granting of a handful of ex-

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[12] Though we do not believe that the number of persons seeking an exemption is relevant to the correct disposition of this case, we note that appellees' objections are not unique. See *Callahan* v. *Woods*, 736 F.2d 1269 (9th Cir. 1984); *Stevens* v. *Berger*, 428 F. Supp. 896 (E.D.N.Y. 1977); *Mullaney* v. *Woods*, 97 Cal. App. 3d 710, 158 Cal. Rptr. 902 (1979); *Atwood* v. *Idaho Dep't of Health & Welfare*, No. 83-3066 (D. Idaho filed May 23, 1983). See also note 14, *infra*.

emptions might be thought to work only a marginal interference with the legislative purposes.[13]

The district court adopted a totally different and, we submit, plainly erroneous approach in its consideration of the compelling programmatic interests served by the SSN requirement. The court did not conclude that the government's interests could be served equally well by dispensing with the SSN requirement for all AFDC and Food Stamp participants; indeed, it did not even conclude that the government's interests could be served equally well by dispensing with the SSN requirement for Little Bird of the Snow alone. Instead, the court concluded that the government should be forced to accept admittedly less effective alternatives (see J.S. App. 19a-21a) simply because the benefits that appellees seek on Little Bird of the Snow's behalf represent such an infinitesimal fraction of federal expenditures for the entire AFDC and Food Stamp programs. The court's approach was analogous to holding that religious exemptions to the payment of taxes should be granted unless the government is able to show that even a few such exemptions would cause the income tax system to collapse. But such an approach has never been accepted in tax cases (see *Lee*, 455 U.S. at 260, cit-

[13] A hypothetical example will serve to illustrate our submission. A state motor vehicle department that issues drivers' licenses surely has a compelling interest in requiring every applicant to pass a vision test. If the department were to schedule vision tests only on Saturdays, it undoubtedly would receive objections from Orthodox Jews, who could not, consistent with their religious beliefs, drive to the testing center on that day. Because the department's compelling interest could be satisfied equally well by offering vision tests on a day other than Saturday, it would be appropriate to require the department to accommodate religious objections to Saturday testing by offering vision tests on another day. By the same token, therefore, the government should be required to grant appellees an exemption from the SSN requirement only if it could be shown that the compelling interests furthered by that requirement could be achieved equally well by employing some other means applicable to all AFDC and Food Stamp participants, and not just to appellees.

ing *Lull* v. *Commissioner*, 602 F.2d 1166 (4th Cir. 1979), cert. denied, 444 U.S. 1014 (1980); and *Autenrieth* v. *Cullen*, 418 F.2d 586 (7th Cir. 1969), cert. denied, 397 U.S. 1036 (1970)), and it is no more viable here.

That the programmatic analysis we advocate is correct is clear from the fact that any "accommodation" the government might make for Little Bird of the Snow alone would entail unacceptable interference with the government's compelling interests. The government could accommodate appellees in one of two ways. First, it could accept the risk of fraud that even the district court acknowledged is inherent in granting an exemption to Little Bird of the Snow (see J.S. App. 19a). Whatever the degree of that risk, we submit that government should not be required to accept it. Not only is Congress entitled to insist on the most effective means for proper administration of its welfare programs, but the public is entitled to the greatest assurance possible that the programs are being administered evenhandedly and fairly. The granting of exemptions, and the concomitant risk of fraud—no matter how slight—cannot help but undermine public confidence in the integrity of these welfare programs.

Second, the government could accommodate appellees' religious scruples and at the same time institute special procedures applicable to their case that would bring the risk of fraud to the same level as obtains in the usual case. But those special procedures would entail such extraordinary burdens and costs that it could no longer be said that the effort necessary for accommodation is reasonable.

If, as we posit, government should not be required to alter its practices in a manner that necessarily heightens the risk of fraud, then the only other alternatives that government could offer would entail such a high cost that even the district court would not require the government to accommodate appellees' religious beliefs (see J.S. App. 16a). Exempting Little Bird of the Snow from the SSN requirement *without* subjecting the government to a

heightened risk of fraud would require the government to devise and implement an entirely new but equally effective system as a substitute for the SSN requirement; the cost of such an alternative system is estimated to be in excess of $900 million (J.A. 24). The district court was able to disregard this cost only by requiring the government to forgo the purposes served by the SSN requirement in the case of Little Bird of the Snow; the court did not and could not demonstrate that accommodating Little Bird of the Snow alone would not impair the government's compelling interest in having *all* program participants adhere to that requirement.

This Court's decision in *Lee* demonstrates the error of the district court's analysis. There, the Court rejected the claim of an Amish employer for an exemption from paying social security taxes for his Amish employees. The Court did not confine its analysis to the effect on the social security program of exempting only the Amish; if it had, the programmatic effect would have been beneficial, because the Amish not only oppose paying into the social security system but they also oppose receiving benefits, and benefit pay-outs far exceed contributions. See *Lee*, 455 U.S. at 262 (Stevens, J., concurring). Instead, the Court looked to the government's compelling interest in uniform administration of the social security program and tax collection in general and concluded that mandatory participation by all employers was essential to the fiscal vitality of the program. *Id.* at 258-260.[11]

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[11] In his concurring opinion in *Lee*, 455 U.S. at 264 n.3, Justice Stevens suggested that "laws intended to provide a benefit to a limited class of otherwise disadvantaged persons [arguably] should be judged by a different standard than that appropriate for the enforcement of neutral laws of general applicability." This might be so, Justice Stevens opined, because vast numbers of persons would have an economic motivation to feign religious claims in order to obtain tax exemptions, but no such motivation would be present in a case that forced the plaintiff to forgo important monetary benefits. We agree that Justice Stevens' observation may well hold true for a "lost plaintiff," perhaps including appellee Roy,

Like *Lee*, the earlier cases of *Braunfeld* v. *Brown*, 366 U.S. 599 (1961), and *Prince* v. *Massachusetts*, 321 U.S. 158 (1944), also demonstrate the impropriety of ignoring a legislative determination that individualized exemptions would undermine the purposes behind a neutral law of general applicability. In *Braunfeld*, the appellants were Orthodox Jewish merchants whose religious convictions required that their places of business remain closed on Saturdays. They sought an injunction to prevent enforcement against them of a state Sunday-closing law, on the ground that closing their businesses on Sundays interfered with their ability to earn a living. The Court rejected the claim, noting that "to permit the exemption might well undermine the State's goal of providing a day that, as best possible, eliminates the atmosphere of commercial noise and activity" (366 U.S. at 608). Had the Court employed the analysis used by the district court in this case, however, it undoubtedly would have been forced to conclude that permitting a few Jewish merchants to keep their businesses open on Sundays would not have significantly interfered with the legislative purposes.[20]

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who decides to forgo benefits in favor of adherence to religious scruples and is willing to undergo the rigors of litigation to vindicate his perceived rights. But once the right to an exemption has been established by a decision of this Court, future claimants need not face any difficult choices. Moreover, acceptance of Roy's claim in this case clearly would provide an economic incentive for future AFDC and Food Stamp applicants to follow Roy's lead, because they would know that they could escape the government's most effective means for detecting fraud merely by feigning a sincere religious objection to furnishing their SSNs to their state welfare agencies. Indeed, the testimony in this case establishes that the mere existence of the SSN requirement serves as a deterrent to fraud (J.A. 346-347).

[20] The Court also noted that to permit the exemption might provide the Jewish merchants with a competitive advantage over other merchants who had no religious objection to the Sunday-closing law. *Braunfeld*, 366 U.S. at 606-609. A similar problem looms large

Prince likewise involved a state statute that imposed an absolute ban on the activity in which the appellants there sought to engage. The statute at issue was a child labor law forbidding children from engaging in street sales of magazines, newspapers, and other merchandise. Unlike the Jewish merchants in *Braunfeld*, whose religious faith was only indirectly burdened by the statute in question (see 366 U.S. at 605-607), the appellants in *Prince* were Jehovah's Witnesses whose religious faith specifically *required* that they engage in the activity the state sought to prohibit—street sales of their religious tracts. Nevertheless, the Court held that the statute was constitutional as applied to the appellants, even though there was clearly no danger to the particular child in question, who had been closely supervised by her aunt.

These cases clearly demonstrate that when the legislature seeks to advance a compelling governmental interest through uniform application of a facially neutral requirement, it is not relevant that granting exemptions in rare cases might work only a minute or incremental interference with the governmental interest. This analysis compels reversal of the decision below. Achievement of the compelling governmental interest in preserving and promoting the fiscal integrity of the AFDC and Food Stamp programs is dependent upon the proper verification of income and resources and the correct payment of benefits to needy individuals. Whether or not any one individual might seek to collect benefits to which he is not entitled is irrelevant; the pertinent point is that the programs as a whole cannot be managed effectively without the SSN requirement. Programs the size of the AFDC and Food Stamp programs cannot possibly be administered without the aid of computer technology, and computers communicate with each other in numbers. One who is opposed on religious grounds to computers

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in this case because the district court's decision effectively assures that the welfare applications of appellees and those who share their beliefs will not receive the same degree of scrutiny that all other applicants undergo.

and numbers might well find the SSN requirement objectionable, but no decision of this Court suggests that such an indirect burden on religious freedom is a sufficient basis for striking down a neutral procedural requirement that is undeniably essential to sound program administration. As Chief Justice Warren observed in *Braunfeld* v. *Brown*, 366 U.S. at 606, there comes a point at which accommodation of such religious beliefs would "radically restrict the operating latitude of the legislature."

Moreover, the decision below leads to absurd consequences. Essentially, the district court has held that government must accommodate those individuals holding the most unique and idiosyncratic religious beliefs because the cost of exempting those few individuals from a facially neutral procedural requirement would be quite small. The logical corollary to this holding is that government may refuse to accommodate religious beliefs so widely held that the administrative burden and programmatic impact would be deemed too great. In effect, the right to the free exercise of religious beliefs would shrink as the number of persons who share those beliefs grows. Such a result defies common sense. Furthermore, entitlement to a religious exemption would change over time, in accordance with unpredictable increases or decreases in the number of persons similarly situated. Constitutional rights should not be made to rest on such shifting sands.

In addition, there would appear to be no limit to the "accommodations" that could be required of government under the district court's analysis. For example, Roy objects to the use of computers but not strongly enough to protest issuance of his AFDC check by a computer. Another plaintiff, however, could insist that the government process his check manually or that he be paid in cash instead of by check. Viewing each case in isolation, as the district court's decision requires, the government might well be able to accommodate each demand without

undue burden or expense. Logic compels the conclusion, however, that there are limits to the accommodations government is required to make in administering facially neutral program requirements, and those limits have been exceeded by the decision below.

3. This Court's decisions construing the First Amendment's protection of speech likewise demonstrate the error of focusing solely on the number of persons who might assert a claim for special treatment. Eschewing that approach, the Court instead has examined the consequences of wholesale exemptions in determining whether a particular plaintiff's claim to an exemption overrides the challenged government regulation. See, *e.g.*, *Regan* v. *Time, Inc.*, No. 82-729 (July 3, 1984), slip op. 16 n.12 ("[I]n determining whether a time, place, and manner regulation substantially serves the State's interest, the effectiveness of the regulation should not be measured solely by the adverse consequences of exempting a particular plaintiff from the regulation."); *Clark* v. *Community for Creative Non-Violence*, No. 82-1998 (June 29, 1984), slip op. 8 ("[I]t is evident from our cases that the validity of this regulation need not be judged solely by reference to the demonstration at hand."); *Heffron* v. *Int'l Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 652 (1981) ("[T]he Minnesota Supreme Court took too narrow a view of the State's interest in avoiding congestion and maintaining the orderly movement of fair patrons on the fairgrounds. The justification for the Rule should not be measured by the disorder that would result from granting an exemption solely to ISKCON."); *cf. United States Postal Service* v. *Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 135 (1981) (Brennan, J., concurring) (citation omitted) ("Surely, the Government is correct when it argues that the Postal Service 'is not required to make a case-by-case showing of a compelling need for the incremental revenue to be realized from charging postage to each organization or individual who desires to use the postal system to engage in expression protected by the First Amendment.'").

These recent decisions are entirely in keeping with the Court's earlier decisions upholding restrictions on expression without regard to the number of persons whose conduct is affected or the ease with which the state might accommodate them. *See Adderley* v. *Florida*, 385 U.S. 39 (1966); *Cox* v. *New Hampshire*, 312 U.S. 569 (1941).

These cases are particularly significant because, at the same time that the Court has focused on the programmatic effects of wholesale exemptions, the Court has not required the government to show a substantial likelihood that large numbers of persons could be expected to claim similar exemptions; instead, the Court has been content to note that if the government granted an exemption to one person or group, it would be required to grant exemptions to all. *See, e.g., Hoffron*, 452 U.S. at 652-654. Here, too, the government need not show that large numbers of persons share appellees' religious beliefs; it is sufficient that the government would have no principled basis upon which to grant some religiously-grounded exemptions and deny others. *Cf. United States* v. *Lee*, 455 U.S. at 263 n.2 (Stevens, J., concurring) (noting the "overriding interest in keeping the government * * * out of the business of evaluating the relative merits of differing religious claims").

4. The present case can readily be distinguished, on both procedural and substantive grounds, from other cases in which this Court has required states to grant religious exemptions from otherwise applicable statutory requirements. *See Thomas* v. *Review Board*, 450 U.S. 707 (1981); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); *Sherbert* v. *Verner*, 374 U.S. 398 (1963). Both *Thomas* and *Sherbert* involved applicants for unemployment compensation who, as a result of having been denied benefits, were forced to choose between having no income or continuing to engage in employment-related activity that would have violated their religious beliefs. In *Yoder*, the state had enforced its compulsory school attendance statute against Amish parents whose religious beliefs

prohibited their children's formal education beyond the eighth grade. This Court held in all three cases that the states were required to accommodate the religious beliefs of the individuals involved.

In contrast to the present case, however, the states in *Thomas* and *Sherbert* were unable to demonstrate a compelling governmental interest. Compare *Thomas*, 450 U.S. at 719, and *Sherbert*, 374 U.S. at 406-409, with J.S. App. 15a, 18a, 22a. It was therefore unnecessary even to reach the question whether the states' interests could be achieved through less burdensome means, either on an individual or programmatic basis.

Moreover, the statutes under consideration in *Thomas*, *Yoder*, and *Sherbert* explicitly permitted exemptions from their general requirements based on individualized determinations of "good cause."[10] Because the legislature in each of those cases had clearly contemplated such exemptions under certain circumstances, the states were unable to persuade the Court that they had sought to accomplish their objectives in the least restrictive manner with respect to the individuals at hand. The statutes in *Thomas*, *Yoder*, and *Sherbert*, unlike the statutes here, provided by their own terms the necessary "play in the joints," *Walz* v. *Tax Comm'n*, 397 U.S. 664, 669 (1970), to allow for exemptions grounded in the Free Exercise Clause.

By contrast, the statutory provisions requiring applicants for AFDC payments and food stamps to provide

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[10] Thus, the provisions of the South Carolina Unemployment Compensation Act at issue in *Sherbert* provided that employees were ineligible for benefits only if they "'[have] failed, *without good cause*'" to apply for, accept or return to work. 374 U.S. at 400 n.3 (emphasis added). Similarly, in *Thomas*, the statute provided that an individual was ineligible for benefits if he "voluntarily left his employment *without good cause*." 450 U.S. at 710 n.1 (emphasis added). Finally, the Wisconsin compulsory school attendance law in *Yoder* likewise provided that its requirements were inapplicable "'to any child excused *for good cause* by the school board.'" 406 U.S. at 208 n.2 (emphasis added).

social security numbers to their state welfare agencies do not permit exemptions for any reason. Furthermore, the increasing importance that Congress attaches to uniform adherence to the SSN requirement cannot be doubted. For example, the use of SSNs in the Food Stamp program was optional with the states until 1981 (see 7 U.S.C. (Supp. IV 1980) 2025(f)); in that year, Congress changed the pertinent statutory language from "may" (*ibid.*) to "shall" (7 U.S.C. 2025(e)). More recently, Congress expanded the number of programs to which the mandatory SSN requirement applies. See pages 15-16, *supra*, and notes 1 & 10, *supra*. It did so on the recommendation of the Grace Commission, which reported that computer matching employing SSNs "is the Federal Government's most cost-effective tool for verification or investigation in the prevention and detection of fraud, waste and abuse." 7 The President's Private Sector Survey on Cost Control, *Management Office Selected Issues, Information Gap in the Federal Government* 90 (1984); see also *id.* at 82-92; 7 The President's Private Sector Survey on Cost Control, *Report on Federal Feeding* 46-55 (1984). Thus, Congress has determined that the compelling governmental interest in verifying program eligibility and preventing welfare fraud cannot be reconciled with the granting of exemptions. That Congress might have written the statutes differently, to permit individually-determined exemptions, is irrelevant. See *United States* v. *Lee*, 455 U.S. at 260-261;[17] *Braunfeld* v. *Brown*, 366 U.S. 599, 608 (1961).[18] The district

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[17] In *Lee*, the Court noted that Congress had permitted an exemption from the social security tax for self-employed Amish. 26 U.S.C. 1402(g). The Court declined to extend a similar exemption to Amish employers on constitutional grounds, reasoning that "Congress has accommodated, to the extent compatible with a comprehensive national program, the practices of those who believe it a violation of their faith to participate in the social security system." 455 U.S. at 260.

[18] The Orthodox Jewish merchants in *Braunfeld* objected to the fact that the Sunday-closing law there at issue did not permit ex-

court erred in ignoring the legislative judgment in this regard and engrafting onto the statutes an unfounded exemption that cannot be squared with the underlying legislative purposes.

Thomas, *Sherbert*, and *Yoder* also presented issues of a fundamentally different nature than the instant case. In *Thomas* and *Sherbert*, the state statutes imposed a substantive condition on the right to unemployment benefits that operated so as to discriminate against the exercise of religious beliefs. An employee who was unavailable for work due to a medical disability was entitled to unemployment benefits, but an employee who declined work or was fired on the basis of religious objections was deemed ineligible for benefits. See *United States* v. *Lee*, 455 U.S. at 264 n.3 (Stevens, J., concurring) (*Thomas* and *Sherbert* may be viewed "as a protection against unequal treatment rather than a grant of favored treatment for the members of the religious sect."). Thus, even though the South Carolina and Indiana unemployment compensation statutes were drafted in neutral terms, in practice they operated so as to treat religious disabilities differently from all other disabilities. In the present case, by contrast, no substantive requirement, religious or otherwise, operates to deny AFDC and Food Stamp benefits to appellees. Rather, what is at issue is merely an informational requirement used to establish a claimant's entitlement to benefits. All persons who decline to provide the information necessary to establish eligibility, for whatever reason, must be denied benefits; religion is simply not a factor in the

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emptions for religious reasons. The Court noted that "[a] number of States provide such an exemption, and this may well be the wiser solution to the problem. But our concern is not with the wisdom of legislation but with its constitutional limitation." 366 U.S. at 608 (footnote omitted). In the present case, given the importance of having a nationally uniform method of identifying recipients of AFDC and food stamps, one might well question whether it would even be wise for Congress to provide exceptions. In any event, exceptions are not constitutionally required.

decisionmaking process. In short, there simply is no parallel between the challenged statutes in *Thomas* and *Sherbert* and the SSN requirement.

Finally, *Yoder* is essentially sui generis. Unlike the typical Free Exercise case, involving a clash between minority rights and the interests of society as a whole, in *Yoder* both the Amish parents and the State of Wisconsin shared a single common interest in providing for the welfare of Amish children. In these circumstances, it is not surprising that the Court rejected the State's attempt, in its capacity as parens patriae, to displace "the fundamental interests of parents * * * to guide the religious future and education of their children" (406 U.S. at 232). The Court stressed the "primary role of the parents in the upbringing of their children * * * as an enduring American tradition" (*ibid.*), and, on the unusual strength of the record made by the Amish parents, refused to permit the State to oust the parents from that role. See also *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925). Even in *Yoder*, however, the Court cautioned that "the power of the parent, even when linked to a free exercise claim, may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens" (406 U.S. at 233-234). The Court simply concluded that the State had failed to make the strong showing necessary to overcome parental primacy in this delicate area (*id.* at 234). See also page 43, *infra*.

B. The Government's Compelling Interest In The Effective and Efficient Functioning Of Its Welfare Programs Cannot Be Satisfied If Appellees Are Exempted From The SSN Requirement

Even if a case such as this were to be analyzed on an individual, rather than a programmatic, basis, we submit that the district court erred in concluding that the government's compelling interest can be satisfied without re-

quiring Roy to furnish an SSN for Little Bird of the Snow. There is something fundamentally wrong with the notion that an individual can claim an entitlement to government benefits while at the same time refusing to comply with that portion of the program designed to verify eligibility and detect fraud most effectively. If appellees wish to avail themselves of government benefits, the Free Exercise Clause does not stand as an obstacle to the government's ability to ensure, as effectively and efficiently as possible, that they are legitimately entitled to receive them. The purpose of the AFDC and Food Stamp programs, after all, is to provide assistance only to the needy. That purpose is undeniably threatened if the government is stripped of the means to ensure that it is, in fact, the needy who are being assisted.

In essence, appellees insist on partaking of government benefits, but only on their own terms. But surely no one would contend that appellees could walk into a state welfare office, assert that they are eligible for welfare benefits, and then state that they object, on religious grounds, to having the government know anything more about them. Clearly, the government is entitled to the information that Congress has determined to be necessary to ensure that welfare applicants are in fact eligible for aid. And appellees' position in this case does not become any more tenable simply because they are willing to provide *some* identifying information; it is not open to appellees to pick and choose which statutory requirements they wish to follow. See *McElrath* v. *Califano*, 615 F.2d 434, 441 (7th Cir. 1980) ("[T]he claim of the appellants to receive welfare benefits on their own informational terms does not rise to the level of a constitutional guarantee."); *cf. Schweiker* v. *Hansen*, 450 U.S. 785, 790 (1981) (Congress conditioned the receipt of Social Security benefits on the filing of a written application, and a "court is no more authorized to overlook [this requirement] than it is to overlook any other valid requirement for the receipt of benefits.").

Moreover, appellees' suggested "less restrictive alternatives" simply do not satisfy Congress's purposes. For example, the dual use of Roy's own SSN to identify himself and Little Bird of the Snow is inherently inconsistent with the role of SSNs as unique *personal* identifiers. The use of Little Bird of the Snow's name alone is likewise an ineffective alternative. Though her name is concededly unusual (but see *Arthur* v. *Washington State Dep't of Social & Health Services*, 19 Wash. App. 542, 549, 576 P.2d 921, 925 (1978) ("A name affords neither precision nor permanence. A social security number does.")), computer cross-matching by name is simply not as reliable as computer cross-matching by SSN, and in some cases it is not even possible. See page 12 & note 8, *supra*. And surely it is not tenable for the constitutionality of federal statutes to turn on the names of the litigants.

The ineffectiveness of Roy's suggested "alternatives" provides yet another basis for distinguishing this case from *Wisconsin* v. *Yoder*, *supra*. In *Yoder*, the Court specifically noted that excusing Amish children from Wisconsin's compulsory education laws beyond the eighth grade in no way jeopardized the State's admittedly strong interest in universal compulsory education (406 U.S. at 235-236). This was so, the Court concluded, because the Amish had carried the extremely "difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education" (*id.* at 235). Appellees, on the other hand, cannot carry the "difficult burden" of demonstrating the adequacy of their proffered "alternatives" to providing an SSN for Little Bird of the Snow.

It is also significant that there really is no means by which the government can fully accommodate Roy's religious beliefs. Although Roy has focused his most vigorous opposition on the SSN requirement, the record reflects that he objects, on religious grounds, to the use of

any information that would identify his family as individuals and that he would be "upset" by the state welfare department's assignment of a unique case number—even if it were not an SSN—to Little Bird of the Snow. See pages 6-7, *supra*. The record also reflects, however, that Little Bird of the Snow, even if exempted from the SSN requirement, still would be subject to numerical identification under some separate system in order to keep track of the information relating to her benefits (J.A. 32, 37-38). Even appellees have not suggested that Little Bird of the Snow's benefits should be processed manually, with her file stored not in a computer but in the desk drawer of a welfare case worker. Yet inclusion of Little Bird of the Snow's records in a government computer system obviously requires the assignment of a unique numerical identifier, if for no other reason than to ensure that she receives the benefits she seeks. When the "alternatives" proposed by appellees necessarily entail virtually identical "evils" to those that prompted this litigation in the first place, it makes no sense whatever to compel the government to devise a special system that, at best, might marginally reduce, but not eliminate, appellees' religious objections to the system mandated by Congress.

C. The Free Exercise Clause Does Not Prevent The Government From Assigning And Using SSNs In The Case Of AFDC And Food Stamp Applicants Who Decline To Furnish SSNs Themselves

The district court's injunction in any event is overbroad. The court cited no legal basis to justify enjoining Secretary Heckler from "using or disseminating" Little Bird of the Snow's SSN and directing her to demand that all other entities, governmental and private, cease using Little Bird of the Snow's SSN. The Free Exercise Clause, even under the most expansive interpretation, only prohibits government from compelling an individual to think or act contrary to his religious beliefs; no decision of this Court holds that the Clause protects

an individual from having his religious sensibilities offended by witnessing actions of government to which he objects.

This Court's early Free Exercise jurisprudence provided protection only for an individual's religious beliefs and opinions, but not his religiously-grounded actions. See, *e.g.*, *Reynolds* v. *United States*, 98 U.S. 145, 166 (1878). Over time, the Court refined the "belief-action" dichotomy, concluding that the Free Exercise Clause guarantees an absolute right to free religious beliefs, but that religiously-grounded actions are subject to governmental regulation for the protection of society. See, *e.g.*, *Cantwell* v. *Connecticut*, 310 U.S. 296, 304 (1940). This distinction remains a fundamental part of the Court's Free Exercise jurisprudence today. See, *e.g.*, *McDaniel* v. *Paty*, 435 U.S. 618, 626-627 (1978) (plurality opinion).

It is a quantum leap, however, and one that this Court has never taken, to hold that governmental action that neither compels an individual to accept beliefs that violate his religion nor personally to undertake actions to which he objects falls within the protection of the Free Exercise Clause. Cf. *Lynch* v. *Donnelly*, No. 82-1256 (Mar. 5, 1984). Surely there is no Free Exercise Clause violation in requiring appellees to do nothing at all, even though they may object to what the government is doing.

Assuming arguendo, therefore, that the Free Exercise Clause could be invoked to prohibit the government from requiring appellee Roy to provide Little Bird of the Snow's SSN (*i.e.*, to *take action* that infringes his religious beliefs), nevertheless the Clause affords no protection against the *government's* use of Little Bird of the Snow's SSN. Although Roy does indeed object to the government's use of Little Bird of the Snow's SSN, that objection does not coerce him into altering his religious beliefs, nor does it compel him to take any action what-

er.[20] It is one thing to hold that an individual may be exempt, on Free Exercise grounds, from having to comply with a generally applicable governmental requirement, but it is quite a different matter to hold that the government must change the manner in which *it* conducts its business so as not to offend appellees. Cf. *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982).

Were the rule otherwise, those professing religious objections to the conduct of war, to the manner in which government spends tax dollars, or to the transaction of business on the Sabbath could assert a Free Exercise Clause violation based on nothing more than their wit-

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[20] Although the statutes at issue in this case require the applicant for benefits to provide the state welfare agency with the SSN of all household members, thereby mandating action on the part of the applicant, it would not be an unreasonable construction of the statutes to conclude that they are satisfied by the government's ability to use SSNs already in its possession, as is the case with Little Bird of the Snow, or by the government's ability to assign (and then use) an SSN for a person who refuses to apply for one. Cf. Exec. Order No. 9397, *supra*; 42 U.S.C. 408(c)(2)(B)(i)(II). Indeed, we are advised by the Social Security Administration that the agency itself assigns SSNs to persons who are required by federal law to have one but decline to complete an application. If, for religious reasons, the individual requiring an SSN does not wish to receive a social security card, the agency will accommodate that request. See Office of Operational Policy & Procedures, Social Security Administration, U.S. Dep't of Health & Human Services, *SSA Pub. No. 64-010(BK), Social Security Number Applications* ¶ RM 00202.020I.3 (1984). Similarly, when an applicant refuses to sign an application for an SSN on religious grounds, SSA personnel may sign in lieu of the applicant. *Id.* ¶ RM 00202.020I.14a. The only exception is that no SSN may be assigned if the applicant refuses to submit the necessary evidence of age, identity, and citizenship or alien status. *Ibid.* In that case, however, it seems clear that the applicant could not qualify for AFDC or Food Stamp benefits in any event. See page 42, *supra*.

running of governmental action that they find offensive on religious grounds. As the Court recognized in *Lee*, 455 U.S. at 260, this is simply not the law.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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